IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 677 OF 2003

Nandu Sahadu @ Sadu Jadhav. ... Appellant.
Versus.
Dattu Sitaram Jadhav & others. ... Respondents.

Shri S.G.Page with Shri S.R.Page for the Appellant.

Shri Jaydeep Deo for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 23rd March, 2005.

P.C.:

1. Heard Shri Page for the Appellant and Shri Deo for the Respondents.

2. The Appellant is the original Plaintiff in a suit for partition., The trial Court decreed the suit for partition. The Appellate Court has set aside the decree by accepting the contention raised by the contesting Defendants that there was an earlier partition.

3. Shri Page, the learned Counsel appearing for the Appellant submitted that merely because there was some oral evidence of earlier partition and there were some mutation entries it was not sufficient to record a finding regarding existence of earlier partition. He submitted that there are admissions given by the Defendants. He submitted that merely because the predecessor of the Plantiff transferred some of the

properties, existence of partition which has allegedly taken place earlier cannot be inferred. Shri Deo relied upon the Judgment of the Apex Court reported in AIR 1962 SC page 287 (Bhagwan Dayal deceased by LRs. v/s. Mst.Reoti Devi deceased through her daughter Mst.Dayavati) in support of his submissions and has supported the impugned Judgment and order.

4. Apart from the mutation entries which are relied upon by the Respondents, the Appellate Court has referred to the admission of the Plaintiff in his cross-examnation that certain lands were allotted to his grand father Vithu and certain lands were allotted to Sitaram who was brother of Vithu. The Appellate Court has also considered the fact that the predecessor of the Appellant sold certain properties by sale deed in the year 1969. The Appellate Court has also referred to other evidence on record which shows that various parties were treating the properties in their respective possession as their own properties. Reliance is placed on mutiation entry effected on the basis of the will executed by Govind in favour of the original Defendant No.3. A perusal of the findings recorded by the Appellate Court shows that the findings are not based only on the mutation entries. The transactions made by the parties are taken into consideration. The admissions given by the Appellant are also considered which show existence of earlier partition.

5. A reference will have to be made to the Judgment of the Apex Court in the case of Bhagwam Dayal (supra). In paragraph 16 the Apex Court has held thus:

> "16. The general principle is that every Hindu family is presumed to be joint unelss the contrary is proved; but this presumption can be rebutted by direct evidence or by course of conduct. It is also settled that there is no presumption that when one member separatres from others that the latter retain united; whether the latter remain united or not must be decided on the facts of each case. To these it may be added that in the case of old transactions when no contemporaneous documents are maintained and when most of the active participants in the transactions have passed away, though the burden still remains on the person who asserts that there was a partition, it is permissible to fill up gaps more readily by reasonable inferences than in a case where the evidence is not obliterated by passage of time." (Underlining mine.)

The Appellant has admitted that there was a partition effected when his grand father was alive. When the

dispute is regarding existence of partition which has allegedly taken place long time back as held by the Apex Court it is permissible to fill up the gaps in evidence of parties by reasonable inferences.

6. The findings recorded by the Appellate Court are purely findings of fact based on appreciation of oral and documentary evience. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.